IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

ALPHONSO BRADFORD V. STATE OF TENNESSEE

Direct Appeal from the Criminal Court for Davidson County
No. 95-A-491, J. Randall Wyatt, Jr., Judge

No. M2008-01317-CCA-R3-HC - Filed December 10, 2008

Petitioner, Alphonso Bradford, appeals the trial court's denial of his petition for writ of habeas corpus. The State has filed a motion pursuant to Rule 20, Rules of the Court of Criminal Appeals of Tennessee, for this Court to affirm the judgment of the trial court by memorandum opinion. We grant the motion and affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Davidson County Criminal Court Affirmed Pursuant to Rule 20 of the Rules of the Tennessee Court of Criminal Appeals

THOMAS T. WOODALL, J., delivered the opinion of the court, in which DAVID H. WELLES and ROBERT W. WEDEMEYER, JJ., joined.

Alphonso Bradford, *Pro Se*.

Robert E. Cooper, Attorney General and Reporter; Matthew Bryant Haskell, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Amy Eisenbeck, Assistant District Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

On September 9, 1995, Petitioner entered a guilty plea and was convicted of second degree murder. He was sentenced to sixty years in the Department of Correction as a Range III Persistent offender.

On March 18, 2008, Petitioner filed a *pro se* petition for habeas corpus relief alleging that the indictment charging him with first degree premeditated murder was invalid because he pled guilty to second degree murder, which was not a lesser-included offense of first degree murder at the time of the offense. He also asserts that his sentence was illegal because it was enhanced beyond the presumptive minimum sentence in violation of Blakely v. Washington, 542 U.S. 296 (2004) and Cunningham v. California, 127 S.Ct. 856 (2007). The criminal court summarily dismissed the

petition, finding that the petitioner's allegations, even if true, did not support a finding that his conviction was void or his sentence expired. The petitioner now appeals.

Article I, section 15 of the Tennessee Constitution guarantees the right to seek habeas corpus relief. Tennessee Code Annotated sections 29-21-101 through 29-21-130 codify the applicable procedures for seeking a writ. However, the grounds upon which a writ of habeas corpus may be issued are very narrow. Taylor v. State, 995 S.W.2d 78, 83 (Tenn.1999). A writ of habeas corpus is available only when it appears on the face of the judgment or the record of the proceedings upon which the judgment was rendered that a court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned despite the expiration of his sentence. See Summers v. State, 212 S.W.3d 251, 255 (Tenn.2007); Archer v. State, 851 S.W.2d 157, 164 (Tenn. .1993); Potts v. State, 833 S.W.2d 60, 62 (Tenn.1992). The purpose of a habeas corpus petition is to contest void and not merely voidable judgments. *Archer*, 851 S.W.2d at 163. A void judgment is a facially invalid judgment, clearly showing that a court did not have statutory authority to render such judgment; whereas, a voidable judgment is facially valid, requiring proof beyond the face of the record or judgment to establish its invalidity. See Taylor, 995 S.W.2d at 83. The burden is on the petitioner to establish by a preponderance of the evidence, that the sentence is void or that the confinement is illegal. Wyatt v. State, 24 S.W.3d 319, 322 (Tenn.2000). Moreover, it is permissible for a court to summarily dismiss a petition for habeas corpus relief, without the appointment of counsel and without an evidentiary hearing, if the petitioner does not state a cognizable claim. See Summers, 212 S.W.3d at 260; Hickman v. State, 153 S.W.3d 16, 20 (Tenn.2004).

Initially, the State points out that the trial court properly dismissed the petition because it was filed in the improper venue. We agree. Petitioner is incarcerated at the Turney Center Industrial Prison and Farm in Only, Tennessee in Hickman County. He filed his writ in the Davidson County Criminal Court. Petitioner does not offer any reasons for filing in a court other than one that is closest in distance to his place of incarceration, as provided in T.C.A. § 29-21-105. Under T.C.A. § 29-21-105, "[t]he application should be made to the court or judge most convenient in point of distance to the applicant, unless a sufficient reason be given in the petition for mot applying to such court or judge." Petitioner in this case has failed to comply with T.C.A. § 29-21-105, and this alone is adequate basis for the trial court to dismiss his petition. See James M. Grant v. State, No. M2006-01368-CCA-R3-HC, 2007 WL 2805208 (Tenn. Crim. App., at Nashville, Oct. 2, 2006).

On appeal, Petitioner essentially argues that the trial court lacked jurisdiction to convict him of second degree murder because second degree murder is not a lesser-included offense of first degree murder. However, contrary to Petitioner's assertions, second degree murder is a lesser-included offense of first degree premeditated murder, the indicted offense. See e.g. State v. Belser, 945 S.W.2d 776, 790 (Tenn. Crim. App. 1996). Accordingly, the trial court had jurisdiction to enter the judgment against Petitioner for second degree murder. Moreover, the record indicates that Petitioner pled guilty to the amended charge of second degree murder. A defendant may agree to the amendment of the indictment. See State v. Yoreck, 133 S.W.3d 606, 612 (Tenn. 2004); see also Tenn. R. Crim. P. 7(b).

Petitioner also asserts that his sentence is illegal because the trial court applied enhancement factors not found by a jury in violation of his Sixth Amendment rights as set forth in Blakely and Cunningham.

Upon review, we note that this court has held that Blakely violations do not apply retroactively to cases on collateral appeal. See, e.g., Billy Merle Meeks v. Ricky J. Bell, Warden, No. M2005-00626-CCA-R3-HC, 2007 WL 4116486 (Tenn.Crim.App., at Nashville, Nov. 13, 2007); Timothy R. Bowles v. State, No. M2006-01685-CCA-R3-HC, 2007 WL 1266594 (Tenn.Crim.App., at Nashville, May 1, 2007); James R.W. Reynolds v. State, No. M2004-02254-CCA-R3-HC, 2005 WL 736715 (Tenn.Crim.App., at Nashville, Mar. 31, 2005), perm. app. denied (Tenn. Oct. 10, 2005). Additionally, Blakely and Cunningham have not been applied to cases of negotiated plea agreements. See Hoover v. State, 215 S.W.3d 776, 779-80 (Tenn. 2007); Keith T. Perry v. Turner, No. W2007-01176-CCA-R3-CD, 2008 WL 185810 (Tenn. Crim. App., at Jackson, Jan. 22, 2008), perm. to app. denied (July 7, 2008). We also note that the decisions of Blakely and Cunningham relate to constitutional violations which, even if proven true, would merely render the judgment voidable and not void. See, e.g., Meeks, 2007 WL 4116486; *Bowles*, 2007 WL 1266594; Donovan Davis v. State, No. M2007-00409-CCA-R3-HC, 2007 WL 2350093, (Tenn.Crim.App., at Nashville, Aug. 15, 2007), perm. app. denied (Tenn. Nov. 13, 2007).

Nothing on the face of the petitioner's judgment indicates that the convicting court was without jurisdiction to sentence the petitioner or that the sentence has expired. As a result, the court's summary dismissal was proper. See Summers, 212 S.W.3d at 260.

Upon review of this matter, this Court concludes that no error of law requiring a reversal of the judgment of the trial court is apparent on the record.

CONCLUSION

Accordingly, the judgment of the trial court is affirmed.

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THOMAS T. WOODALL, JUDGE